

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

Jane Doe, John Doe, and Jack Doe, on	)	
Behalf of Themselves and All Others	)	C.A. No. N24C-09-002-FJJ
Similarly Situated,	)	
	)	CLASS ACTION
Plaintiffs,	)	
	)	
v.	)	
	)	
Bayhealth Medical Center Inc., d/b/a	)	
Bayhealth,	)	
	)	
Defendant.	)	
	)	

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT AND PROVISIONALLY
CERTIFYING SETTLEMENT CLASS**

THIS CAUSE comes before the Court on Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement with Incorporated Memorandum of Law (“Motion”), filed April 2, 2026.¹ Plaintiffs’ unopposed Motion requests entry of an order (a) granting Preliminary Approval of the Settlement; (b) provisionally certifying the Settlement Class for settlement purposes; (c) appointing Plaintiffs as Class Representatives; (d) appointing Raina C. Borrelli of Strauss Borrelli PLLC and Joshua R. Jacobson of Jacobson Phillips PLLC as Class Counsel

¹ All capitalized terms used herein have the same meanings as those defined in Section I of the Settlement Agreement (“SA”), attached to the Motion as *Exhibit 1*.

for the Settlement Class; (e) approving the forms of Notice and the Notice program; (f) approving the Claim Form and the Claim process; (g) appointing the Settlement Administrator; (h) establishing procedures for members of the Settlement Class to opt-out of or object to the Settlement; and (i) scheduling a Final Approval Hearing on whether to grant Final Approval of the Settlement and Class Counsel's Motion for Fee Award and Costs and Class Representative Service Awards.

Having carefully reviewed the proposed Settlement and its exhibits, all relevant filings, and the record, the Court finds that the proposed Settlement satisfies the criteria for Preliminary Approval, the proposed Settlement Class should be preliminarily certified, the proposed Notice program and Claim process should be approved, and Class Representatives, Class Counsel, and the Settlement Administrator should be appointed. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Motion is **GRANTED** as set forth herein.

Background

This Action arises from Defendant's alleged unauthorized use of "code-based trackers," known as "trackers" or "tracking technologies" on Defendant's website to collect private health information and private identifying information of Defendant's consumers and then disclose the gathered information to third parties. In their operative amended complaint, Plaintiffs assert claims against Defendant for

negligence, negligence *per se*, breach of implied contract, unjust enrichment, violation of the Delaware Consumer Protection Act, and breach of confidentiality. On April 4, 2025, the Court denied in part and granted in part Defendant's Motion to Dismiss Plaintiff's First Amended Complaint, dismissed the negligence *per se* claim, and denied the Motion in all other respects.

After the Court's Order on Plaintiff's Motion to Dismiss and after a period of discovery, the parties began discussing a potential resolution of the action through mediation and requested a stay of proceedings, which the Court granted on January 12, 2026. Mediation was then scheduled with experienced mediator Bruce Friedman, Esq. of JAMS.

Prior to the mediation, Plaintiffs requested and Defendant responded to informal discovery pertaining to the class size, types of information collected through the tracking technologies utilized on its website, how such information was used, and damages suffered by the Settlement Class. Plaintiffs also prepared and produced a mediation statement outlining their positions. The parties attended the full-day mediation on February 9, 2026. At the conclusion of the mediation, Mr. Friedman made a mediator's proposal, which each party accepted. The parties then worked to draft, negotiate, and finalize the Settlement Agreement, Notices, and Claim Form accompanying the Motion.

Pursuant to the Agreement, Defendant will make available to all Settlement Class Members who submit a claim (1) one year of CyEx Privacy Shield Pro and/or (2) a twenty-five dollar (\$25.00) cash payment. Defendant will also pay Notice and Administrative Expenses, any Fee Award and Costs awarded by the Court to Class Counsel, and any Service Award Payments to Class Representatives approved by the Court. Additionally, Defendant has confirmed that certain changes to the technologies utilized on its public-facing website have been implemented on or before, and up to, the date of the Preliminary Approval Order, to ensure Defendant's website materially complies with the Health Insurance Portability and Accountability Act (HIPAA), including, if applicable, requiring business associated agreements with third-party providers of tracking technologies.

Plaintiffs now seek Preliminary Approval of the Settlement on behalf of the proposed Settlement Class. Defendant does not oppose the Motion and agrees that the Court should grant Preliminary Approval and allow Notice to issue to the Settlement Class. As further discussed below, the Settlement falls within the range of judicial approval and includes a comprehensive Notice program and Claim process. As such, the proposed Settlement satisfies the criteria for Preliminary Approval, the proposed Settlement Class should be preliminarily certified, and the proposed Notice program, Notices, Claim process, and Claim Forms should be approved.

Preliminary Certification of the Settlement Class

1. The Court provisionally and preliminarily certifies the following Settlement Class for Settlement purposes only, finding the Court is likely to finally certify it at Final Approval:

All Bayhealth patient portal users who have used the Bayhealth Web Properties as of July 2025.

Excluded from the Settlement Class are (1) the judges presiding over this Action, and members of their direct families; (2) Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

2. The Court determines that for Settlement purposes the proposed Settlement Class meets all the requirements of Delaware Rule of Civil Procedure 23(a) and (b)(3), namely that the Settlement Class is so numerous that joinder of all members is impractical; there are common issues of law and fact; the claims of the proposed Class Representatives are typical of absent members of the Settlement Class; the Class Representatives will fairly and adequately protect the interests of the Settlement Class, as they have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent Class Counsel to prosecute the Action; common issues predominate over any individual issues; and a

class action is the superior means of adjudicating the controversy. Class Counsel is also adequate.

3. Jane Doe, John Doe, and Jack Doe are designated and appointed as the Class Representatives.

4. The Court finds that Raina C. Borrelli and Joshua R. Jacobson are experienced attorneys and will adequately protect the interests of the Settlement Class, and appoints them as Class Counsel pursuant to Federal Rule of Civil Procedure 23(g).

Preliminary Approval of the Proposed Settlement

5. Upon preliminary review, pursuant to Delaware Rule of Civil Procedure 23, the Court finds the proposed Settlement is likely to be approved as fair, reasonable, and adequate at the Final Approval Hearing, otherwise meets the criteria for Preliminary Approval, and warrants issuance of Notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Final Approval Hearing

6. A Final Approval Hearing shall take place before the Court on **October 29, 2026 at 10:00 a.m.** to determine, among other things, whether (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to Delaware Rule of Civil Procedure 23; (b) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all

claims against Defendant in the Action should be dismissed with prejudice; (c) Settlement Class Members should be bound by the Releases set forth in the Settlement; (d) the proposed Final Approval Order and final judgment should be entered; and (e) the Motion for Class Counsel's Fee Award and Costs and Service Award Payments should be granted. Any other matter the Court deems necessary and appropriate will also be addressed at the Final Approval Hearing.

7. Class Counsel intends to seek an award of attorneys' fees and Litigation Costs and Expenses, not to exceed \$800,000.00 in the aggregate, subject to Court approval. Service Award Payments of up to \$2,500.00 each will also be sought for the Class Representatives (\$7,500.00 total). These amounts appear reasonable, but the Court will defer ruling on those awards until the Final Approval Hearing when considering the Motion for Attorneys' Fees, Costs, and Service Awards.

8. Class Counsel shall file the Motions for Final Approval and for Attorneys' Fees, Costs, and Service Awards no later than 60 days after the date of this Preliminary Approval Order.

9. Any Settlement Class Member that has not timely and properly opted out from the Settlement in the manner described below may appear at the Final Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement and the Motion for Attorneys' Fees, Costs, and Service Awards; provided, however, no member of the Settlement Class that has

elected to opt out of the Settlement shall be entitled to object or otherwise appear, and no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described below.

Settlement Administration

10. Simpluris Inc. is appointed as the Settlement Administrator, with responsibility for implementing and completing the Notice program, overseeing the Claim process, and performing all other acts necessary for Settlement Administration. Defendant will pay for the Notice and Settlement Administration Expenses, which will be paid separately from costs associated with providing the Settlement benefits to the Settlement Class.

Notice to the Settlement Class

11. The Notice Program and forms of Notice, including the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and toll-free Settlement phone number, along with the Claim Form, attached as exhibits to the Agreement, are approved. Non-material modifications to the Notices and Claim Form may be made by written agreement of the Parties without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program and to perform all other tasks the Settlement requires.

12. The Court finds that the form, content, and method of the Notices (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Delaware Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by members of the Settlement Class.

Opting-Out of the Settlement Class

13. Members of the Settlement Class may opt-out of the Settlement Class at any time prior to the Opt-Out Deadline (60 days after Notice is transmitted) by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Deadline. The opt-out request must be personally signed by the Settlement Class Member and contain the requestor's name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of

this Agreement, including the Releases and Released Claims, even if that Settlement Class Member does not submit an Approved Claim.

14. Any member of the Settlement Class who timely and validly opts-out from the Settlement Class shall, provided the Court grants Final Approval, (a) be excluded from the Settlement Class by Order of the Court; (b) not be a Settlement Class Member; (c) not be bound by the terms of the Settlement; and (d) have no right to receive Settlement benefits.

Objecting to the Settlement

15. A Settlement Class Member that complies with the requirements of this Preliminary Approval Order and the Agreement may object to the Settlement and/or Motion for Attorneys' Fees, Costs, and Service Awards. Objections must be filed with the Court, and sent by U.S. Mail or email to the Settlement Administrator.

16. For an objection to be considered by the Court, the relevant Settlement Class Member must submit the objection no later than the Objection Deadline, as specified in the Notice, and the relevant Settlement Class Member must not have excluded him or herself from the Settlement Class. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal

Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

17. For an objection to be considered by the Court, it must also set forth the following:

- a. the name of the proceedings;
- b. the objector's full name, current mailing address, telephone number, and email address;
- c. a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection;
- d. the identity of any attorneys representing the objector;
- e. proof that the Settlement Class Member is a member of the Settlement Class (e.g., copy of settlement notice, attestation of membership);
- f. a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing;
- g. copies of any documents the Settlement Class Member wishes to submit in support of their position;
- h. a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and

i. the signature (or electronic equivalent) of the Settlement Class Member

j. if represented, the signature of the Settlement Class Member's attorney.

18. Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel, including taking depositions and propounding document requests.

19. Any Settlement Class Member who fails to object to the Settlement in the manner described herein shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or of this Preliminary Approval Order by appeal or any other means.

Claim Process and Distribution Plan

20. The Settlement establishes a Claim process for assessing and determining the validity of Claims and paying Settlement Class Members who submit Approved Claims. The Court preliminarily approves this process.

21. Settlement Class Members that qualify for and wish to submit a Claim shall do so in accordance with the requirements and procedures specified in the Settlement and Claim Form. If the Settlement is finally approved, any Settlement Class Member that qualifies for any Settlement benefit but fails to submit a Claim

in accordance with the requirements and procedures specified in the Settlement and Claim Form shall be forever barred from receiving any such benefit. Such Settlement Class Member, however, will in all other respects be subject to and bound by the provisions of the Settlement, including the Releases, the Final Approval Order, and final judgment.

Termination of the Settlement Agreement and Use of this Preliminary

Approval Order

22. This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Preliminary Approval Order, if the Settlement is not finally approved by the Court, the Settlement is terminated in accordance with its terms, or there is no Effective Date. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Preliminary Approval Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

23. If the Settlement is not finally approved by the Court, the Settlement is terminated in accordance with its terms, or there is no Effective Date, then this Preliminary Approval Order shall be of no force or effect; shall not be construed or used as (a) an admission, concession, or declaration by or against Defendant of any

fault, wrongdoing, breach, or liability or (b) to support a claim for class certification; shall not be construed or used as an admission, concession, or declaration by or against any Class Representative or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense (including without limitation any defense to class certification) or claims he or she may have in this Action or in any other lawsuit.

Stay of Proceedings

24. Except as necessary to effectuate this Preliminary Approval Order, this Action and any Court deadlines set in this Action are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order, or until further order of this Court.

Jurisdiction Pending Settlement Approval

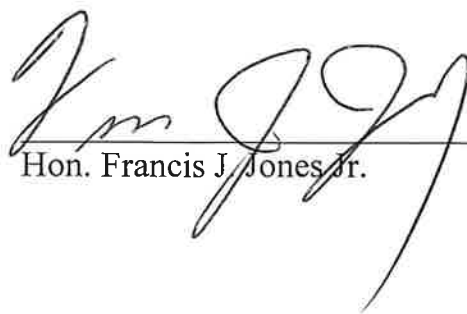
25. This Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof, in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

Summary of Deadlines

26. The Settlement as preliminarily approved shall be administered according to its terms pending the Final Approval Hearing. The Court hereby sets the following schedule of events:

Notice Deadline (Date Notice Program Begins)	30 days after Preliminary Approval Order is entered
Motion for Final Approval and Application for Attorneys' Fees and Cost Award and Service Award Payments	30 days after Notice Deadline
Opt-Out Deadline	60 days after Notice Deadline
Objection Deadline	60 days after Notice Deadline
Claims Deadline	90 days after Notice Deadline
Final Approval Hearing	October 29, 2026, at 10:00 am

SO ORDERED THIS 5th DAY OF JUNE 2026.


 Hon. Francis J. Jones Jr.